



REPUBLIC OF KENYA

High Court at Eldoret

Criminal Appeal 115 of 2012

REPUBLIC PROSECUTOR/RESPONDENT

VERSUS

EDWIN KIPCHIRCHIR LAGAT ACCUSED/APPLICANT

RULING ON BOND

The application for bond was made by Mr. Chemoyai advocate on behalf of the accused soon after the plea was taken on 18th February, 2013.

Mr. Kabaka, State Counsel opposed the application stating that the witnesses the prosecution have lined up in their case are relatives of the accused and that the deceased man is a cousin to the accused. That therefore there was a likelihood that, if the accused is released on bond, would interfere with the witnesses. He further stated that the witnesses and family of the deceased live in one homestead.

In rejoinder, Mr. Chemoyai for the accused submitted that the contention by the prosecution that they are apprehensive of witness interference has not been substantiated.

Under Article 49 (1) (h) of the Constitution, Court will only decline to grant bail to an accused person if there are compelling reasons. With time, courts have spelt out what they consider are compelling reasons. One reason is the likelihood of interference with witnesses by the accused. This is the reasons the prosecution advances that the court should consider in not granting the bail. Their further submission is that the family of the victim and of the accused live in the same compound. He did not however expound how the latter affects the application herein.

Whereas these contentions may be true, it was imperative that they be put in their opposition in writing by way of filing an affidavit possibly from the investigating officer. In the absence of an affidavit, I would consider the opposition by the prosecution without basis.

However, it is pointless to release the accused into a dangerous environment. If his family lives in the same compound with that of the victim, the likelihood of re-igniting bad blood between the families is so real. This may lead to more offences being committed by either side.

In this regard, I would not find it prudent to grant the accused bail for now. I direct that the Probation Officer files a pre-bail report which should include the social background of the accused and his relationship with the family of the victim. Once this is filed, and depending on the report's outcome, the defence will be at liberty to renew its quest for bail.

DATED and DELIVERED at ELDORET this 19th day of March, 2013.

G. W. NGENYE – MACHARIA

JUDGE

In the presence of:

Mr. Omboto holding brief for Chemoyai for the Applicant/Accused

Mr. Omwega for the Respondent/State